

**FOR PUBLICATION**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE NINTH CIRCUIT**

MITCHELL BARNES-WALLACE;  
MAXWELL BREEN,  
*Plaintiffs-Appellees,*

v.

CITY OF SAN DIEGO,  
*Defendant,*

and

BOY SCOUTS OF AMERICA - DESERT  
PACIFIC COUNCIL,  
*Defendant-Appellant.*

No. 04-55732

D.C. No.  
CV-00-01726-  
NAJ/AJB

MITCHELL BARNES-WALLACE;  
MAXWELL BREEN; LORI BARNES-  
WALLACE, Guardian Ad Litem;  
LYNN BARNES-WALLACE, Guardian  
Ad Litem; MICHAEL BREEN,  
Guardian Ad Litem; VALERIE  
BREEN, Guardian Ad Litem,  
*Plaintiffs-Appellants,*

v.

CITY OF SAN DIEGO; BOY SCOUTS OF  
AMERICA - DESERT PACIFIC  
COUNCIL,  
*Defendants-Appellees.*

No. 04-56167

D.C. No.  
CV-00-01726-  
NAJ/AJB

ORDER

Filed June 11, 2008

Before: William C. Canby, Jr., Andrew J. Kleinfeld, and  
Marsha S. Berzon, Circuit Judges.

**ORDER**

The petition of Defendants-Appellees for panel rehearing is GRANTED. The certification order filed in this case on December 18, 2006, is withdrawn. A new certification order with accompanying concurrence and dissent is filed contemporaneously with the filing of this order. Subsequent petitions for rehearing or rehearing en banc may be filed.

The pending petition of defendants-appellees for rehearing en banc is dismissed as moot. No other petitions for panel or en banc hearing have been filed.



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